

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 17, 2008

STATE OF TENNESSEE v. ERIC CONDRELL O'NEAL

Appeal from the Circuit Court for Marshall County
No. 17114 Robert Crigler, Judge

No. M2007-02885-CCA-R3-CD - Filed October 28, 2008

Convicted by a Marshall County Circuit Court jury of two counts of statutory rape and sentenced to one year and nine months' incarceration, the defendant, Eric Condrell O'Neal, appeals alleging that the evidence is insufficient to support the convictions and that the trial court erred by ordering a fully incarcerative sentence. Because no order or minute entry overruling the motion for new trial appears in the record, however, this court is without jurisdiction to consider the appeal, and it must, therefore, be dismissed.

Tenn. R. App. P. 3; Appeal Dismissed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Hershell D. Koger, Pulaski, Tennessee (on appeal), and M. Don Himmelberg, Nashville, Tennessee (at trial), for the appellant, Eric Condrell O'Neal.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; W. Michael McCown, District Attorney General; and Weakley E. Barnard, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Appellate Jurisdiction

The State asserts that this court is without jurisdiction to consider the defendant's appeal because the trial court failed to enter an order denying the motion for new trial.

On May 4, 2007, a Marshall County Circuit Court jury convicted the defendant of the November 18, 2005 and January 3, 2006 statutory rapes of the victim, J.F.¹ The sentencing hearing, originally scheduled for June 20, 2007, was finally held on December 19, 2007. During the seven months between the jury verdict and the sentencing hearing, the trial court allowed Mr. Himmelberg to withdraw and appointed Mr. Koger to represent the defendant at the sentencing hearing. Also during this time period, the defendant filed motions for new trial on October 10, 2007, and December 18, 2007, challenging the sufficiency of the evidence and the sentence yet to be imposed by the trial court.

At the conclusion of the sentencing hearing, the trial court addressed the pending motion for new trial, stating, “I accredit the jury’s verdict and find there was more than adequate proof that a jury could conclude beyond a reasonable doubt that the defendant was guilty.” Despite concluding that the defendant’s motion was without merit, the trial court did not enter an order denying the motion for new trial. Further, the record contains no minute entry expressing the order of the court and bearing the signature of the trial judge. Under these circumstances and for the reasons discussed below, the appeal must be dismissed.

The timely filing of a motion for new trial tolls the time for filing a notice of appeal after a judgment has been entered, *see* Tenn. R. App. P. 4(c) (providing that the time for appeal runs “from the entry of an order denying a new trial”), and it results in the trial court’s continued jurisdiction over the case, *see id.* 4(e) (“The trial court retains jurisdiction over the case pending the court’s ruling on any timely filed motion specified in subparagraph . . . (c) of this rule.”). So long as the motion for new trial remains unresolved, this court may not consider an appeal because our jurisdiction is limited to the appellate review of “*final* judgments of trial courts in . . . [c]riminal cases, both felony and misdemeanor.” T.C.A. § 16-5-108(a) (1994) (emphasis added). Thus, the trial court’s failure to enter any order disposing of the motion for new trial leaves the case pending in the trial court.

Although Tennessee Rule of Criminal Procedure 33, which addresses the filing and hearing of motions for new trial in criminal cases, does not by its terms require the trial court to enter a written order disposing of the motion for new trial, *see* Tenn. R. Crim. P. 33(c)(3), Tennessee Rule of Appellate Procedure 4(c) clearly keys the time for filing the notice of appeal to the “*entry* of the order denying a new trial.” Tenn. R. App. P. 4(c) (emphasis added). Thus, although no written findings of fact are required, the trial court must rule on the motion and enter an order to start the clock for any appellate proceedings. No such written order denying the motion for new trial was filed in this case.

The absence of a written order denying the motion for new trial would not have been fatal, however, had the record contained a minute entry disposing of the motion and bearing the signature of the trial judge. *See State v. Perry A. March*, No. M2006-02732-CCA-R3-CD (Tenn. Crim. App., Nashville, July 15, 2008). As we explained in *March*, because ““minute entries or

¹It is the policy of this court to refer to the minor victims of sexual offenses by their initials.

judgment orders . . . , or certified copies thereof” are ‘principal records’ establishing a court’s actions through its orders,” a minute entry denying the motion for new trial is effective to relieve the trial court of jurisdiction of the case and start the time for filing the notice of appeal. *See id.*, slip op. at 2 (quoting *State v. Woodall*, 729 S.W.2d 91, 93 (Tenn. 1987)); *see also Mullen v. State*, 51 S.W.2d 497, 498, 164 Tenn. 523, 528 (1932) (“[C]ourts speak only through their minutes”); *Dyer v. State*, 79 Tenn. 509, 514 (1883) (stating that court minutes “import absolute verity”). The appellate record contains no such entry.

Accordingly, the appeal is dismissed.

JAMES CURWOOD WITT, JR., JUDGE